

BASIC CONCEPTS

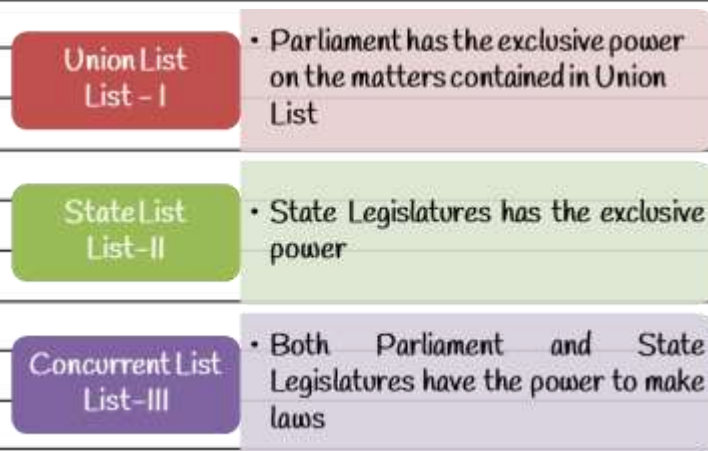
Power to levy taxes

The Constitution of India, in **Article 265** lays down that

"No tax shall be levied or collected except by authority of law."

Accordingly, both the levy of a tax as well as its collection, shall be made only under a law framed by the government.

The Parliament and State Legislatures are empowered to make laws on the matters enumerated in the **Seventh Schedule** by virtue of Article 246 of the Constitution of India.



Income-tax is the most significant direct tax.

Entry 82 of the Union List provides power to the Parliament to make laws on "Taxes on income other than agricultural income"

Components of the Income Tax Law

Income-tax Act, 1961

- It extends to the whole of India.
- It came into force on 1st April, 1962.
- It contains sections 1 to 298, Chapter I to XXIII and 14 schedules.

Income-tax Rules, 1962

The administration of direct taxes is looked after by the Central Board of Direct Taxes (CBDT).
Rules made for carrying out purposes of the Act.
These rules are collectively called Income-tax Rules, 1962

Case Laws

Issued by different appellate forums

Decisions on dispute between assessee and the department

Supreme Court Decision is Law of the Land

High Court decision has State Jurisdiction

NA at Intermediate Level

Circulars

Issued by Central Government

-> to give effect to provisions and

-> to make or amend rules

Binding on both Assessee as well as Department

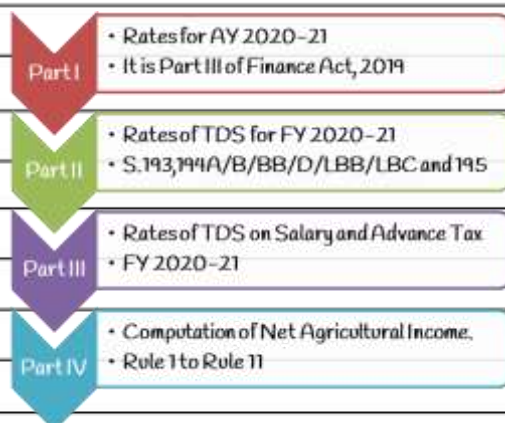
Notifications

Issued by CBDT

-> to deal with specific problems and

-> to clarify doubts regarding the scope and meaning of certain provisions

Officer are bound by the circulars, assessee is not!



The Finance Act

Amendments are made **every year** to the Income-tax Act, 1961 and other tax laws by the Finance Act

The 3 Parts of First Schedule of The Finance Act

Charge of Income Tax

Section 4 of the Income Tax Act is the "Charging Section". It forms the basis for levy and collection of tax under the Income Tax Act.

(1) Where any **Central Act** enacts that

- > income-tax shall be charged for any **assessment year** at any rates,
- > it shall be charged for that year in accordance with, and subject to the provisions of, this Act
- > in respect of the total **income** of the **previous year** of every person:

Provided that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period **other than the previous year**, income-tax shall be charged accordingly.

(2) In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance.

Section 2(9) "assessment year" **means** the period of twelve months commencing on the 1st day of April every year.

Section 3: Previous year

For the purposes of this Act, "previous year" **means** the financial year immediately preceding the assessment year:

Provided that,

- > in the case of a business or profession newly set up, or
- > a source of income newly coming into existence, in the said financial year,
- > the previous year shall be the period beginning with
 - # the date of setting up of the business or profession or
 - # the date on which the source of income newly comes into existence and ending with the said financial year.

MCQ

Q Rushabh, a CA student, started a business on 13.07.2020 and is following a policy to close the books on Dec 31 every year. What will be the previous year?

A 01.04.2020 to 31.03.2021

B 13.07.2020 to 31.03.2021

C 13.07.2020 to 31.12.2020

D 01.04.2020 to 31.12.2020.

Accelerated Assessments

Shipping business of non-resident – Section 172

- Ship of Non-Resident with goods, passengers etc. leaving from port in India
- Leave after paying or arranging to pay 7.5% of freight from Indian Cargo.

Persons leaving India – Section 174

- With no present intention of returning back
- Income upto the probable date of his departure

AOP/ BOI/ AJP formed for a particular event or purpose – Section 174A

- Likely to be dissolved in the same year or in the next year
- Assessment of the income up to the date of dissolution

Persons likely to transfer property to avoid tax – Section 175

- Sell, charge, transfer, dispose or part away to avoid payment of any liability
- Assessment of the income up to the date of starting of the proceedings

Discontinued business – Section 176

- Discontinued in any assessment year
- Assess up to the date of such discontinuance
- at the discretion of the Assessing Officer

Q Singham, ITO finds that Mr. Raju has discontinued business on 30th July 2020. He could tax Mr. Raju

A Immediately, in AY 2020-21 as per part III of the 1st Sch of Finance Act, 2020

B In AY 2021-22 as per part I of the First Schedule of Finance Act, 2021

C Both (A) & (B)

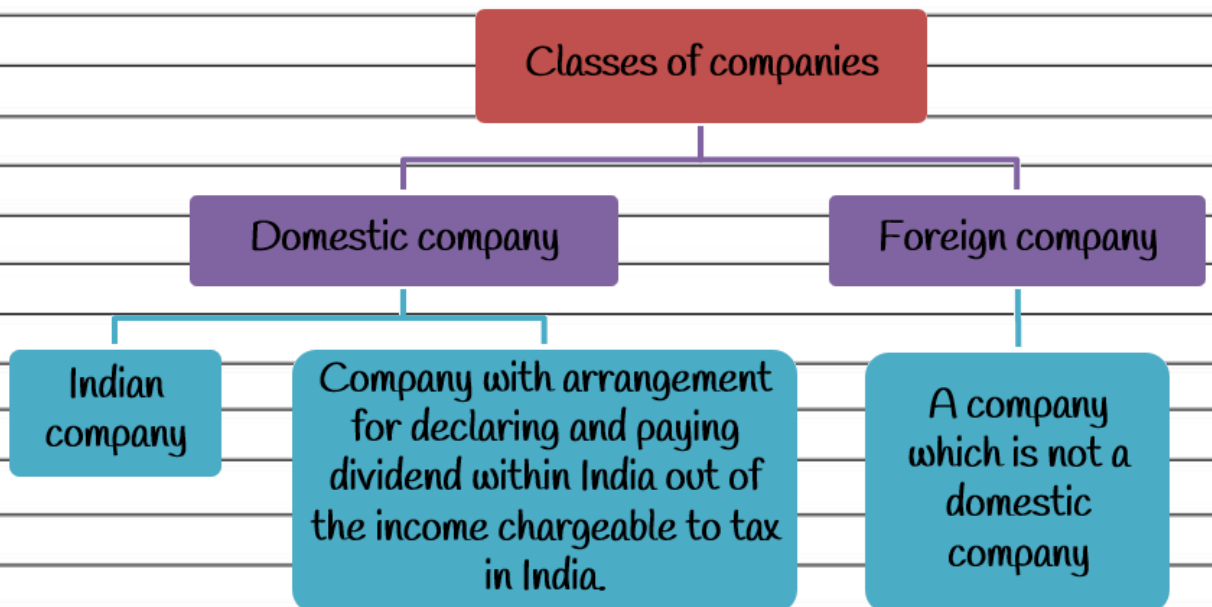
D Either (A) & (B) as per his discretion

Section 2(31): Person

includes—

- (i) an individual
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) a local authority, and
- (vii) every artificial juridical person, not falling within any of the preceding sub-clauses.

Explanation. —For the purposes of this clause, (v), (vi) and (vii) shall be **deemed** to be a person, whether or not they are formed with the object of deriving income.



SECTION 2(24): INCOME

The definition of income begins with the words "Income includes". Therefore, it is an inclusive definition and not an exhaustive one.

Such a definition does not confine the scope of income but leaves room for more inclusions within the ambit of the term having regards to its general meaning.

Revenue	Capital	Others
<ul style="list-style-type: none">• Profits and gains• Dividends• Perquisite• Allowance• Deemed profits• PF Contribution• Deemed profits	<ul style="list-style-type: none">• Capital gains• Keyman insurance policy• Issue of shares exceeding FMV• Forfeiture of Advance• Compensation for termination of employment• Subsidy or grant or cash incentive	<ul style="list-style-type: none">• Voluntary contributions• Mutual Transactions of lending Co-Op• Winnings from lotteries etc.• Not carrying out any activity• Conversion of Inventory to CA• Gifts

RATES OF TAXES

Individual/ Hindu Undivided Family (HUF)/ Association of Persons (AOP)/ Body of Individuals (BOI)/ Artificial Juridical Person

Total income	Rate of Tax
(i) Upto ₹ 2.5 Lakhs	NIL
(ii) Exceeds ₹ 2.5 Lakhs but does not exceed ₹ 5 Lakhs	5% on amount exceeding ₹ 2.5 Lakhs
(iii) Exceeds ₹ 5 Lakhs but does not exceed ₹ 10 Lakhs	₹ 12,500 plus 20% of total income exceeding ₹ 5 Lakhs
(iv) where the total income exceeds ₹ 10 Lakhs	₹ 1,12,500 plus 30% of total income exceeding ₹ 10 Lakhs

Total income	Rate of Tax
(i) Upto ₹ 3 Lakhs	NIL
(ii) Exceeds ₹ 3 Lakhs but does not exceed ₹ 5 Lakhs	5% on amount exceeding ₹ 3 Lakhs
(iii) Exceeds ₹ 5 Lakhs but does not exceed ₹ 10 Lakhs	₹ 10,000 plus 20% of total income exceeding ₹ 5 Lakhs
(iv) where the total income exceeds ₹ 10 Lakhs	₹ 1,10,000 plus 30% of total income exceeding ₹ 10 Lakhs

Total income	Rate of Tax
(i) Upto ₹ 5 Lakhs	NIL
(ii) Exceeds ₹ 5 Lakhs but does not exceed ₹ 10 Lakhs	20% of total income exceeding ₹ 5 Lakhs
(iii) where the total income exceeds ₹ 10 Lakhs	₹ 1,00,000 plus 30% of total income exceeding ₹ 10 Lakhs

Surcharge

The amount of tax to be increased by the applicable **surcharge** (calculated as a percentage of income tax and subject to a marginal relief) is as follows:

(i)	where the total income exceeds ₹ 50 Lakhs	10%	3.00	33.00	34.32
(ii)	where the total income exceeds ₹ 1 Crore	15%	4.50	34.50	35.88
(iii)	where the total income exceeds ₹ 2 Crores	25%	7.50	37.50	39
(iv)	where the total income exceeds ₹ 5 Crores	37%	11.10	41.10	42.744

Further, maximum rate of surcharge on income assessable under sections 111A / 112A or 115AD or dividend income shall not exceed 15%.

Rate of Surcharge – Different Scenes

Nature of Income	Scene I	Scene II	Scene III	Scene IV	Scene V
Dividend	₹ 10 lakhs	₹ 10 lakhs	₹ 60 lakhs	₹ 60 lakhs	₹ 55 lakhs
STCG u/s 111A	₹ 20 lakhs	₹ 60 lakhs	₹ 54 lakhs	₹ 54 lakhs	₹ 60 lakhs
LTCG u/s 112A	₹ 25 lakhs	₹ 65 lakhs	₹ 55 lakhs	₹ 55 lakhs	₹ 55 lakhs
Other Income	₹ 40 lakhs	₹ 50 lakhs	₹ 3 Crores	₹ 6 Crores	₹1.10 Crore

Section 87A – Rebate

Rebate of up to ₹ 12,500 for resident individuals having total income of up to ₹ 5 lakh

Option for Individual and HUF – Alternative Tax Regime

(i)	Up to ₹ 2.50 Lakhs	Nil
(ii)	From ₹ 2.50 Lakhs to ₹ 5.00 Lakhs	5%
(iii)	From ₹ 5.00 Lakhs to ₹ 7.50 Lakhs	10%
(iv)	From ₹ 7.50 Lakhs to ₹ 10.00 Lakhs	15%
(v)	From ₹ 10.00 Lakhs to ₹ 12.50 Lakhs	20%
(vi)	From ₹ 12.50 Lakhs to ₹ 15.00 Lakhs	25%
(vii)	Above ₹ 15.00 Lakhs	30%

Concept of Marginal relief

If the assessee is an individual and his total income exceed Rs. 50 Lakhs, the surcharge levied is @10%. While if the same individual earns more than Rs. 1 Crore, the surcharge levied is @15%. Now, a problem arises when an assessee has barely crossed the threshold specified for applicability of surcharge.

Sr.	Particulars	Case I ₹	Case II ₹	Increment ₹
1	Total Income	50,00,000	50,01,000	+1,000
2	Income Tax	13,12,500	13,12,800	+300
3	Surcharge*	NIL	1,31,280	+1,31,280
4	Total Tax before HEC	13,12,500	14,44,080	+1,31,580
5	HEC @ 4%	52,500	57,763	+5,263
6	Total Tax Liability	13,65,000	15,01,843	+1,36,843

In order to mitigate this undue hardship to the assessee, provision has been made to provide for a relief in such marginal cases by restricting the amount of incremental income-tax and surcharge payable, to the extent of incremental total income.

Tax Liability with marginal relief.

Sr.	Particulars	Case I	Case II	Increment
1	Total Income	50,00,000	50,01,000	+1,000
2	Income Tax	13,12,500	13,12,800	+300
3	Surcharge	NIL	1,31,280	+1,31,280
4	Less: Marginal Relief	NIL	1,30,580	-1,30,580
5	Tax and Surcharge	13,12,500	13,13,500	+1,000
5	HEC @4%	52,500	52,540	+40
6	Total Tax Liability	13,65,000	13,65,040	+1,040

Special Rate of Taxes

Section	Income	Rate of Tax						
112	Long term capital gains (other than LTCG taxable as per section 112A)	20%						
112A	<p>Long term capital gains on transfer of –</p> <ul style="list-style-type: none"> • Equity shares in a company • Unit of an equity-oriented fund • Unit of business trust <p>Condition for availing the benefit of this concessional rate is Securities Transaction tax should have been paid–</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Type of Security</th> <th style="text-align: center;">Payment of STT</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Equity shares in a company</td> <td style="text-align: center;">both at the time of acquisition and transfer</td> </tr> <tr> <td style="text-align: center;">Unit of equity-oriented fund or unit of business trust</td> <td style="text-align: center;">at the time of transfer</td> </tr> </tbody> </table> <p>Note: LTCG up to ₹ 1 lakh is exempt. LTCG exceeding ₹ 1 lakh is taxable @10%.</p>	Type of Security	Payment of STT	Equity shares in a company	both at the time of acquisition and transfer	Unit of equity-oriented fund or unit of business trust	at the time of transfer	10% [On LTCG > ₹ 1 lakh]
Type of Security	Payment of STT							
Equity shares in a company	both at the time of acquisition and transfer							
Unit of equity-oriented fund or unit of business trust	at the time of transfer							
111A	<p>Short-term capital gains on transfer of –</p> <ul style="list-style-type: none"> • Equity shares in a company • Unit of an equity-oriented fund • Unit of business trust <p>The conditions for availing the benefit of this concessional rate are –</p> <p>(i) Such transaction should be chargeable to securities transaction tax.</p>	15%						
115BB	<p>Winnings from</p> <ul style="list-style-type: none"> • Lotteries; Crossword puzzles; • Races including horse races; • Card games and other games of any sort; • Gambling or betting of any form or nature 	30%						
115BBE	<p>Unexplained money, investment, expenditure, etc. deemed as income under section 68 or section 69 or section 69A or section 69B or section 69C or section 69D</p> <p>The effective rate of tax (including surcharge @25% of tax and cess @4% of tax and surcharge) is 78%</p>	60%						

Undisclosed sources of income

Cash Credits [Section 68]

- Sum is found credited in the books and
- No explanation about the nature and source or found to be unsatisfactory by the AO.
- Credits charged as income of that PY.

Unexplained Investments [Section 69]

- Investments made but not recorded in books
- No explanation about the nature and source or found to be unsatisfactory by the AO.
- Value of investment deemed to be income .

Unexplained money etc. [Section 69 A]

- Owner of any money, bullion, jewellery or other valuable article not recorded in books
- No or unsatisfactory explanation
- Money etc. is income of PY in which it's found

Amount of investments or money etc. not fully disclosed [Section 69B]

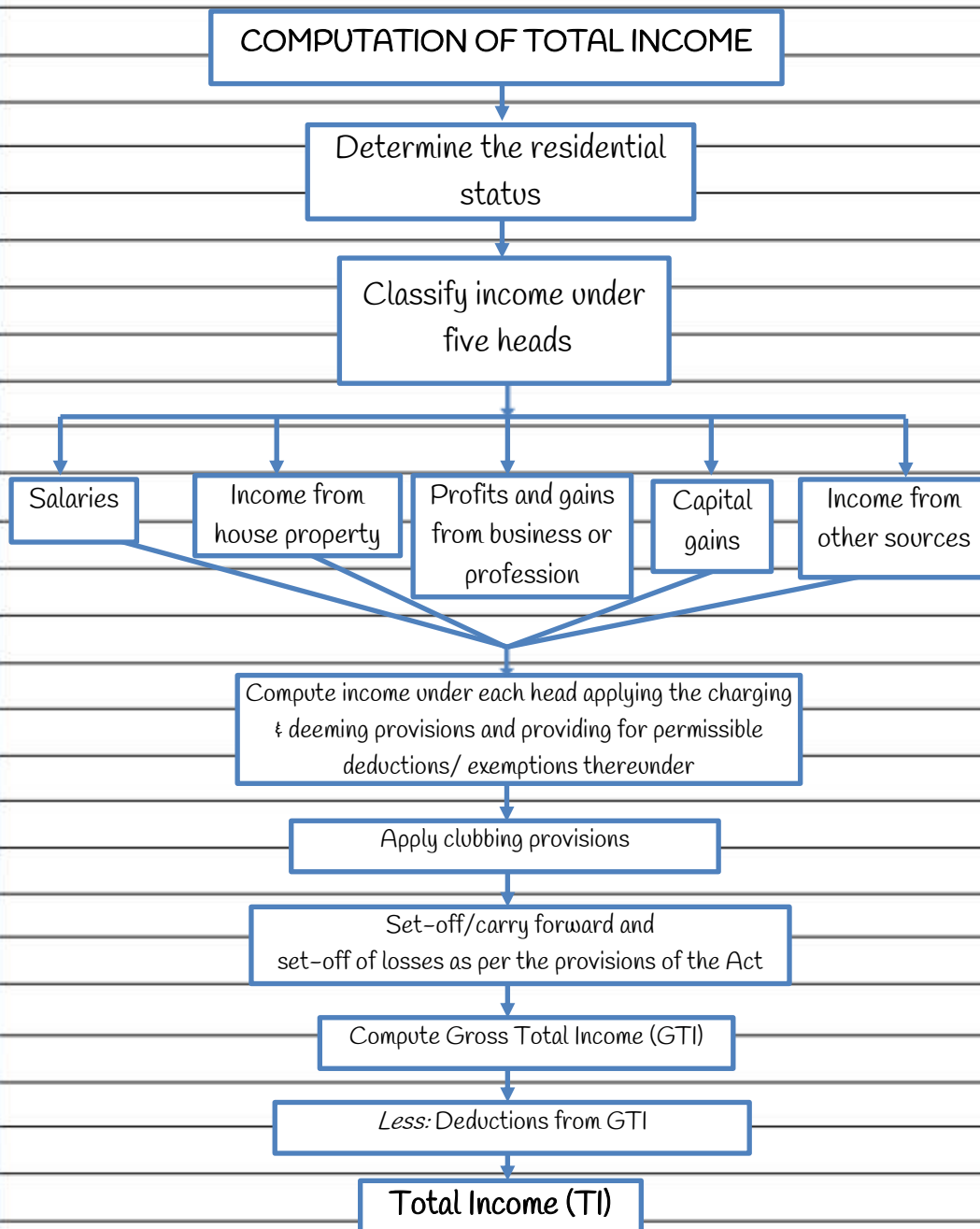
- Amount spent on inv. or acquiring bullion etc exceed the amount recorded in the books
- No or unsatisfactory explanation
- Such excess may be deemed to be the income

Unexplained expenditure [Section 69C]

- Expenditure incurred for which no or unsatisfactory explanation about the source
- Unexplained amount of exp treated as income
- Exps not to be allowed as deduction

Amount borrowed or repaid on hundi [Section 69D]

- Amounts, to the extent, borrowed or repaid other than a/c payee cheques deemed to be the income.
- Once borrowing is treated as income, repayment would not be income.



Other Rates

Firm/LLP/local authority	30%		
Co-operative Society	Total income (in ₹)		Rate of Tax
	Upto ₹ 10,000		10%
	₹ 10,001 to ₹ 20,000		20%
	Above ₹ 20,000		30%
Company	Domestic Company		Foreign Company
	Total turnover or gross receipts in the P.Y. 2018-19 ≤ ₹ 400 crores	Other domestic companies	
	25%	30%	40%
Firm/Limited Liability Partnership/Local Authorities/Co-operative societies (other than co-operative societies opting for section 115BAD)			
Where the total income > ₹ 1 crore			12%
Domestic company (other than a domestic company opting for section 115BAA or section 115BAB)			
Total income > ₹ 1 crore but is ≤ ₹ 10 crore			7%
Total income is > ₹ 10 crore			12%
Foreign company			
Total income > ₹ 1 crore but is ≤ ₹ 10 crore			2%
Total income is > ₹ 10 crore			5%

Q Cartflip Ltd. a domestic company having a turnover of ₹ 350 Crores during the previous year 2018-19. The tax payable by it on ₹ 102 Lakhs earned is:

- A** ₹ 28,37,640
- B** ₹ 34,05,168
- C** ₹ 35,64,288
- D** ₹ 29,70,240

Option for Domestic Companies – Alternative Tax Regime

The Taxation Laws (Amendment) Act, 2019 has inserted two new sections 115BAA and 115BAB. Domestic company can opt for section 115BAA or section 115BAB, as the case may be, subject to certain conditions. The total income of such companies would be computed without giving effect to deductions under section 10AA, 32AD, 33AB, 33ABA, 35AD, 35CCC, 35CCD, 80-IA to 80RRB (except section 80JJAA or section 80M), additional depreciation under section 32(1)(iia) etc. and without set-off of brought forward loss and unabsorbed depreciation attributable to such deductions. The summary of the alternative tax regime available to domestic companies is tabulated as under:

Sections	Tax rate	Surcharge
Section 115BA – manufacturing companies set-up and registered on or after 01 st March, 2016	25%	7%/12%*
Section 115BAA – Other domestic companies	22%	10%
Section 115BAB – manufacturing company (set up and registered on or after 01 st October, 2019	15%	10%

These sections will be dealt with in detail at Final Level.